IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.283/2006.

Mr. Teofilo Barreto ..Petitioner.

V/s.

Sadashiva G. Nasnodkar and Ors. ..Respondents.

Mr J.E.Coelho Pereira, Sr.Advocate for the Petitioner.

Mrs. A. A. Agni, Advocate for the Respondent.

CORAM: V.C. DAGA,J.

DATE : 5th March,2007.
(Pronounced at Mumbai)

JUDGMENT.
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1. This writ petition arising from the order dated 31st August, 2005 in Regular Civil Appeal No. 20 of 2005 passed by the II Ad-hoc Additional District Judge, Panji is heard finally by consent of parties at the stage of admission.

FACTS:-

. The facts required to be stated to decide this petition are as under:-

2. Plaintiff had instituted a suit, before Civil Judge, Senior Division valued at Rs. 38,500/- for the purpose of court fee and jurisdiction, inter-alia, praying for permanent injunction, mandatory injunction and for

deletion of the entry in occupant's column of the record of rights.

3. On being summoned, petitioner appeared and filed written statement, inter-alia, denying the claim of the plaintiff and preferred counter claim, inter-alia, claiming damages to the tune of Rs. 90,00,000/- from the plaintiff and for the said purpose valued the counter claim at Rs.90,00,000/-.

4. The trial Court after trying the suit and counter claim on merits by its judgment and order dated 31.12.2004 was pleased to dismiss the suit of the plaintiff as well as the counter-claim of the petitioner.

5. Respondent no.1- original plaintiff in the suit, filed an appeal against the said judgment and decree of the trial Court before the District Court, whilst the petitioner chose to file cross objection under Order 41 Rule 22 of the Code of Civil Procedure,1908 ("the Code" for short)

6. The Petitioner, by an application dated 14th July,2005, inter-alia, submitted that as the valuation of the counter claim before the lower Court was Rs.90,00,000/- and as the same

being the valuation in cross-objection filed before the Appellate Court, the District Court would have no pecuniary jurisdiction to entertain and or decide the matter, hence appeal alongwith cross-objection be transferred to the High Court.

7. The learned II Ad-hoc Additional District Judge, Panji, after hearing the arguments of the rival parties, was pleased to reject the above application of the petitioner by its order dated 31st August, 2005 holding that the District Court has jurisdiction to entertain and dispose of the appeal and cross-objection in view of provision of Order 20 Rule 19(2) of the Code.

8. Being aggrieved by the aforesaid impugned order dated 31st August, 2005, petitioner preferred this writ petition under Article 227 of the Constitution of India to challenge the said impugned order.

RIVAL SUBMISSIONS:-

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9. Mr. J. K. Coilho Pereira, learned Senior Counsel for the petitioner urged that the impugned order dated 31st August, 2005 deserves to be quashed and set aside as the District Court has no jurisdiction to

entertain, hear and dispose of the appeal since the subject-matter of the appeal exceeds the pecuniary jurisdiction of the District Court.

10. In the submission of the learned Senior Counsel the value of the subject-matter of the suit and of the counter claim gets rolled up and interlocked and by implication, as a general rule, constitute unified proceedings unless the counter-claim is excluded under the provisions of Order 8 Rule 6-C of the Code. This exceptional provision in Rule 6-C only illustrate the homogeneity of the suit claim and the counter claim as a single proceeding.

11. Learned Senior Counsel for the petitioner further urged that the reliance placed on provision of the Code by the Lower Appellate Court is erroneous and misplaced. According to him, Order 20 Rule 19 sets out; how a judgment is to be rendered and a decree to be drawn where set off or counter claim is allowed. In his submission Rules 9 to 19 of Order 20 are illustrative of contents of decrees in certain specified categories of suits. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of **Lakshmi Ram Bhuyan Vs. Hari Prasad Bhuyan and others (2003) I S.C.C.197.**

12. Mr. Pareira would submit that Order 20 Rule 19 (2) is one of such illustrative provisions dealing with appeal in Suit where counter-claims have been allowed. While putting his interpretation on the provision of Order 20 Rule 19; he submits that the provision contemplates two situations,viz; Sub Rule (1) deals with how a decree is to be passed when the set off or counter-claim is allowed, while sub Rule (2) provides that in appeal from decree in a suit, where there is a set off or counter-claim, the said decree shall be subject to the procedure contemplated in Order 41, as if no set off or counter-claim has been claimed and Sub Rule 3 lays down that the provisions of sub Rules 1 and 2 would apply irrespective of the fact, whether the set off is admissible under the provisions of Rule 6 of Order 8 or otherwise.

13. The learned Senior counsel for the petitioner also invited my attention to the provisions of Order 41 of the Code and went on to point out that there is no special provision made in respect of appeals from decrees passed in suits where there is a set-off or a counter claim. According to him, Order 41 Rule 30 contemplates how a Judgment in appeal is to be

passed and Rule 33 sets out what are the powers of the Appellate Court. As such, according to him, since there is no special provision concerning appeals from decrees in suits where counter claims are preferred; it is necessary to resort to the harmonious construction considered from this angle in his submission, reading of Order 20 Rule 19(2) would make clear that the same has been inserted, to specifically deal with cases where appeals arise from suits where there is a counter claim. He submits that Order 20 Rule 19 has been amended to insert the word "counter claim" in sub-Rule 1 and 2 on incorporation of the provisions of Rule 6A to 6G to Order 8 of the Code.

14. Mr. Pareira, turning to the case on hand, would submit that the consolidated valuation of the suit and the counter-claim would be in the sum of Rs. 90,38,500/-. He, thus, submits that the claim in appeal and counter-claim put together would constitute subject-matter of appeal, travelling beyond the pecuniary jurisdiction of the District Court which has a jurisdiction only to try appeals valued upto Rs. 1,00,000/-. Hence appeal with counter- -claim needs to be transferred to the High Court.

15. Per contra, Mrs. Agni would submit that it is the valuation of the subject matter of the suit that determines the forum of appeal. Once the suit is valued and the jurisdiction of the court is determined at the stage of the institution of the suit, then valuation of the plaint will be the valuation for the subsequent proceedings in the suit, appeal being continuation of the suit. Thus, valuation of the suit will govern the forum of appeal.

16. In the submission of Mrs. Agni Order 20 Rule 19 (1) covers only the cases where suit claim and counter-claim are for recovery of money. Unified decree can be passed only when upon adjustment a specific sum to be due to plaintiff or defendant can be worked out. In other words, her submission is : where counter claim is filed say for recovery of possession of immovable property, or mandatory injunction or permanent injunction, etc., the same would not be covered by clause (1) of Order 20 Rule 19. On the other hand, Clause (2) of Order 20 Rule 19, covers cases where counter-claim involves claim other than money claim. According to her, a counter-claim is to be treated as a plaint in a cross Suit. Though

the suit and the counter-claim is required to be disposed of by a common judgment and decree. However, counter claim would retain it's independent character in cases not covered by clause (1) of Order 20 Rule 19. She, thus, submits that the view taken by the Court below is logical, legal warranting no interference at the hands of this Court.

THE ISSUE

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17. The substantive issue on the submissions as between the parties is as under:-

> Whether the District Court (Appellate Court) lacks jurisdiction to entertain, hear and decide the appeal when the valuation of the cross-objection exceeds the pecuniary jurisdiction of the District Court?

LEGAL PROVISIONS:-

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18. In order to consider the above issue, it is necessary to turn to the relevant legal provisions including legislative history thereof.

19. Under the Code of Civil Procedure, 1882 Act No.XIV of 1882 (the old Code) i.e. prior to the present Code of 1908, provision for filing written statement and set-off was under Chapter III and the provision in case of decree when set-off, was as under:-

> 216:- If the defendant has set-off the amount of a debt against the claim of the plaintiff, and such set off has been allowed, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.
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> The decree of the Court, with respect to any sum awarded to the defendant, shall have the same effect, and be subject, to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

20. A special committee was appointed by the Council of Governor General of India to consider the amendment of the Civil Procedure

Code. The said special committee submitted it's report. It was accepted and published in the Gazette of India (Part V) September 7, 1907.

21. The Code of Civil Procedure Act V of 1908, (the new Code) came to be enacted to consolidate and amend the Laws relating to the Procedure of the Civil Courts. The new Code received assent of the Governor General of India on the 21st March, 1908. As a result of new Code, amended provision Order 20 Rule 19 relating to the decree when set-off is allowed came on the statute book in place of Section 216 of the Old Code. The statement of Object and Reasons for enacting Order 20 Rule 19 in the present form in substitution of Section 216 of the Old Code read as under:-

> "The Committee have introduced an amendment to give effect to the view that appeals from decrees relating to set off should lie to the Courts to which appeal in respect of the original claim would lie".

Order 20 Rule 19 of the new Code (prior to 1976 amendment) reads as under:-

(1)Where the defendant has been allowed a set-off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

(2)Any decree passed in a suit in which a set-off is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off had been claimed.

(3) The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise.

22. There was no provision in the Code (Prior to amended Act 104 of 1976) in relation to counter-claim. The provision for filing counter-claim by a defendant was introduced, for the first time, by the 1976 Amendment to the Code of Civil Procedure, 1908 and consequently, Order 8 R. 6A to Order 8 R. 6G came to be inserted by virtue of which now the counter-claims can be set up by the defendant. Order 8 Rule 6A of the C.P.C., 1908, reads as under:-

6-A. Counter-claim by defendant:-

(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the

claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

. Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit,both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

6-B. Counter-claim to be stated.- Where any

defendant seeks to rely upon any ground as supporting a right of counter-claim, he shall, in his written statement, state specifically that he does so by way of counter-claim.

6-C. Exclusion of counter-claim.-- Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.

6-D. Effect of discontinuance of suit. If in any case in which the defendant sets up a counter-claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.

6-E. Default of plaintiff to reply to counter-claim.-- If the plaintiff makes default in putting in a reply to the counter-claim made by the defendant, the Court may pronounce judgment against the plaintiff in relation to

the counter-claim made against him, or make such order in relation to the counter-claim as it thinks fit.

6-F. Relief to defendant where counter-claim succeeds.-- Where in any suit a set-off or counter-claim is established as a defence against the plaintiff's claim, and any balance is found due to the plaintiff or the defendant, as the case may be, the Court may give judgment to the party entitled to such balance.

6-G. Rules relating to written statement to apply.-- The rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim.

23. Consequent upon introduction of provisions relating to the counter-claim order 20 Rule 19 also came to be amended, which now read as under:-

Order 20. Rule 19 (1) and (2):-

(1)Where the defendant has been allowed a set off(or counter-claim) against the claim of the plaintiff, the decree shall state what amount is due to the

plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

(2)Any decree passed in a suit in which a set off(or counter-claim) is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off (or counter- claim) had been claimed.

24. One more provision which need to be noticed is Order 41 Rule 22 of the Code which reads as under:-

Order 41 Rule 22:-

Any respondent, though he may not have appealed from any part of the decree, may not only support the decree (but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross- -objection) to the decree which he could have taken by way of

appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Explanation:- A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is,wholly or in part, in favour of that respondent.

DISSECTION OF LEGAL PROVISIONS:-

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25. The above extracted Legislative history of the Code of Civil Procedure demonstrates that in the old Code of 1882 it was provided

that where the set-off was claimed by the defendant and the decree was passed in his favour, the amount of that decree relating to the set-off was to determine the forum of appeal. The old Civil Procedure Code came to be replaced with new Code and Order 20 Rule 19 (2) came to be inserted with a view to provide appeal from decree relating to set-off to the court to which appeal in respect of original claim would lie. By subsequent amendment i.e. by Amending Act of 104 of 1977 Code came to be amended and counter-claim is brought on the same platform on which claim of set-off was.

(A) Scope of Counter-claim:-

(a) Under Order 8 Rule 6A (2) of the C.P.C., 1908, it is provided that a counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce final judgment in the same suit, both on the original claim and the counter-claim and Order 8 Rule 6A (3) entitles the plaintiff to file a written statement in answer to the counter-claim while Order 8 Rule 6A (4) clearly provides that the counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

(b). Recognizing that a counter-claim is a cross-suit and not a separate suit, there is firstly, no registration of a counter-claim as a separate suit. Secondly, the Legislature has made a provision in Order 20 Rule 19 (1) C.P.C., 1908 that whenever a set-off or counter-claim is allowed, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant and shall be for the recovery of any sum which appears to be due to either party. Therefore, essentially a set-off or counter-claim is allowed, then the provision of Order 20 Rule 19(1) of the C.P.C., 1908 comes into play.

(c). There is no specific provision for drawing a separate decree for a counter-claim in as much as a counter-claim is not registered separately in the "Register of Suits". What the Law contemplates is treating the counter-claim as a cross-suit.

(d) Consequently, when a counter-claim is allowed or partly granted or dismissed by a common judgment, a single decree is drawn up by the Court and no separate decrees are drawn up in respect of the plaint and the counter-claim. Similarly, under Order XX R. 19(1) C.P.C., 1908, no separate decree is required to be

drawn if counter-claim is allowed, but just one decree is provided therein.

JUDGMENTS OF VARIOUS COURTS:-

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26. With the aforesaid dissection of statutory provisions, let me now turn to the judgments of the various courts dealing with counter claims and its effect.

27. Before amendment to the C.P.C. by Amending Act No. 104 of 1978 Supreme Court had an occasion to consider the nature of the counter-claim. In the case of **Laxmidas Vs. Nanabhai A.I.R. 1964 S.C.11** wherein Their Lordships said that " A right to make a counter-claim is statutory and a counter claim is not admissible in a case which is admittedly not within Order 8 Rule 6 C.P.C.

28. In the case of **Uthandarma Pillai V. Arumugam Pillai AIR 1971 Madras 215,** the Court considered as to what is meant by counter claim, and when the same can be entertained. Their Lordships said thus:-

> "A counter claim is one based on an independent cause of action which distinguishes it from a set off which generally arises as a part of the transaction giving rise to the cause of action for the suit. The

> essence of counter claim is that the defendant should have a cause of action against the plaintiff and should be in the nature of a cross action against the plaintiff and not merely a defence to the plaintiff's claim." (emphasis supplied).

29. In that case, their Lordships said that the defendant cannot prefer a counter claim for improvements in a suit for redemption filed by the plaintiff for the reasons that if redemption is not allowed, the value of improvements also cannot be granted. So, it is not an independent cause of action. According to me, the said decision is now given a legislative sanction in view of Rules 6-D and 6-E to Order 8, C.P.C. That is why those Rules say that even in the case of the plaintiff's suit being stayed, discontinued or dismissed, the counter claim has to be continued, and, even if the plaintiff is not filing a written statement to the counter claim, the Court can pass a judgment on the counter claim. Since it is an independent cause of action, an adjudication is required and the Court is allowed to proceed to adjudicate the same in spite of the fact that the claim is made in a suit filed by the plaintiff.

30. In **AIR 1977 Calcutta 312 (Daga Films V. Lotus Production),** a learned Judge of the

Calcutta High Court reiterated the above legal position.

31. In **AIR 1991 Calcutta 53 (Narayan Chandra De V. Pratirodh Sahnk),** a learned Judge of that High Court was considering whether a Revision is maintainable against the dismissal of a counter claim. While the suit was pending, defendant put forward a counter claim in the written statement. The trial Court held that the same is not maintainable. A revision was taken. The learned Judge said that even if a decree is not prepared by the Registry, still it is an adjudication of rights of parties and, therefore, comes within the definition of "Decree". The Revision was, therefore, held not maintainable. The learned Judge in para 8 of the said judgment said thus:-

> "It is urged that the preparation of a formal decree or otherwise is immaterial for determination whether a particular order constitutes decree,I am referred to the decision in Kanji Hirajbhai Gondlia V. Jivaraj Bharamshi, A.I.R. 1976 Gujarat 152, which, according to the opposite party, lands support to his contention. The plff.

sued for possession and arrears of rent. Trial Court held that the suit for possession was not maintainable for want of a valid notice. Trial Court refused to draw up formal decree on the ground that a part of the suit had been disposed of on a preliminary issue and the other part of the suit.viz. Suit for rent was pending. It was held that the decision of the learned Trial Judge so far as the relief for possession was concerned was a substantive decision or determination. It is a final adjudication between the parties in respect of a suit for possession. Order of the learned trial Judge conclusively determined the rights of the parties on the question of eviction. It was held whether an order passed by a Court is a decree or not could not depend on the drawing up of a decree was the duty of the Court. If a Court did not draw up a decree, it could not be said that the order of the Court by which rights of the parties were finally adjudicated upon was not a decree."

32. Finally, accepting the decision of the Gujarat High Court referred to hereinabove the learned Judge said thus:

> "I have already opined that the counter claim is a suit for all intents and purposes. And the order of the learned Munsif finally disposes of the suit

> while he held that the counter claim was not maintainable. It is immaterial that no formal decree was drawn up in the instant case also."

33. In this connection, it may also be noted that all the provisions of a plaint are made applicable to a counter claim. In the decision reported in **1996 Kerala Law Journal 722 (Sarojini Amma V. Dakshyani Amma)** the question that came for consideration before the Kerala High Court was, whether in a counter claim, application for impleadment under Order 1, Rule 10 C.P.C. could be filed. In that case, plaintiff had not impleaded certain persons. But the defendant, in a counter claim in that suit, wanted to implead certain persons who were, according to the defendant, answerable to the counter claim. In that case, the Court held that "Under Order 1,R. 10 C.P.C., at the instance of the defendant, additional parties could be impleaded to the counter claim'. While considering the same, the learned Judge held thus:-

> "The main purpose of setting up a counter claim to prevent multiplicity of proceedings between the parties. As observed already, it has to be treated as a plaint and is governed by the rules applicable to it. It has to contain the particulars as in Order VII, Rule 1, C.P.C. among other requirements. Indeed, "Plaint" has not been statutorily

defined. But it should contain necessary and relevant facts constituting the cause of action. The counter claim need not necessarily be confined to the claim made against the plaintiff, and if for its effective adjudication- besides the plaintiff, other interested persons should be made parties, they should be impleaded, if the Court is satisfied that without them the adjudication will be incomplete. Order 8, Rule 6-A, C.P.C. does not say as to who shall be parties to the counter claim. The provisions as to joinder of parties under Order 1, Rule 10, C.P.C., would also apply to counter claim, no doubt, subject to the condition that persons impleaded are necessary and proper parties for an effective adjudication of the questions involved. The submission that Order VIII Rule 6-A does not enable the participation of persons who are not already parties to the suit is difficult to accept".

34. In the decision reported in **(1991) Madhya Pradesh Law Journal 102 (Shivkali Bai v. Meera Devi),** wherein a learned Judge of that High Court held thus:-

"Counter claim being in the nature of Cross suit, is not affected by the dismissal of plaintiff's suit. The counter claim has to be disposed of on merits. Therefore, the dismissal of plaintiff's suit on the ground of non joinder of necessary party would not affect the counter claim of the defendant."

"The only difference is instead of filing two suits having two registered numbers, relief is sought for in the same suit by both plaintiff and defendant. The inference is irresisti-ble. Therefore, that a counter claim will be a suit, it must have a cause of action and that cause of action can be independently enforced,necessary court fee must be paid on the relief sought

for."

EMERGING PRINCIPLES:-

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35. From the above decisions, the following principles emerge:-

36. A counter claim is really a suit, though the same is taken in the written statement. Just as a suit is filed by the plaintiff, defendant seeks a relief against the plaintiff on a cause of action which he has against the plaintiff.It is an independent cause of action which could also be agitated in a separate suit. It is to avoid multiplicity of proceedings, defendant is given liberty to file a counter claim and get adjudication. Issues are suggested in both the original claim as well as in the counter claim, and both are disposed of by a common Judgment. Order 8, R.6-A (2), C.P.C. says that there can be a final judgment in the same suit, both on the original claim and counter claim). In common parlance, 'common judgment' means, 'decision arrived simultaneously in more than one suit tried together'. In view of the legal position under Order 8, Rule 6-A, C.P.C.; a counter claim or set off can be made in many forms in a

suit. But they need not be given separate numbers. The counter claim could also said to be a weapon of evidence and enables the defendant to enforce the claim against the plaintiff as effectively as an independent action. As stated earlier, it is an enabling provision which has given a right to the defendant that instead of filing an independent action, he can seek that relief in a suit filed by plaintiff against him. Originally, there was a doubt whether the counter claim could only be filed in a suit for recovery of money and whether there should be nexus to the cause of action on which the suit is instituted. However, the legal position is now settled in view of the judgment of the Supreme Court in the case of **Shri Jag Mohan Chawlav. Dera Radha Swami Satsang**, **1996 (S) JT (SC) 428** wherein their Lordships have held thus:-

> "....The counter claim could be treated as a cross suit and it could be decided in the same suit without relegating the parties to a fresh suit. It is true that in money suits, decree must be conformable to Order 20,Rule 18, C.P.C. but the object of amendments introduced by Rules 6-A to 6-G are conferment of a statutory right to the defendant to set up a counter claim independent of the claim on the basis of which the plaintiff laid the suit, on his own cause of action. In sub-rule (1) of Rule 6-A, the language is so couched with words of wide width as to enable the parties to bring his own independent cause of action in respect

> of any claim that would be the subject-matter of an independent suit. Thereby, it is no longer confined to money claim or to cause of action of the same nature as original action of the plaintiff. It need not relate to or connected with the original cause of action or matter pleaded by the plaintiff. The words "any right or claim in respect of a cause of action accruing with the defendant" would show that the cause of action from which the counter claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff that occasioned to lay the suit. The only limitation is that the cause of action should arise before the time fixed for filing the written statement expires. The defendant may set up a cause of action which has accrued to him even after the institution of the suit. The counter claim expressly is treated as a cross suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite Court-fee thereon. Instead of relegating the defendant to an independent suit to avoid multiplicity of the proceeding and needless protection, the legislature intended to try both the suit and the counter claim in the same suit as suit and cross suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit..." (Emphasis supplied)

37. The aforesaid decision has been subsequently followed by this Court in the decision reported in **1996 (2) Maharashtra Law Journal 844 (Hemraj V. Yamunabai).** From the above judgment of the Supreme Court it is clear that the scope of a counter claim is in the

nature of a cross suit for all purposes.

38. Upshot of the above emerging principles is that the counter claim has to be treated as a separate suit. Only for the purpose of convenience and speedy disposal of rival claims, counter-claim in a suit is made permissible.

39. Now let me turn to the provisions relating to the appeals.

(A) **Provisions relating to appeal:-**

(i). Under the Code of Civil Procedure, 1908, the provision for filing appeal against a decree is contained in Section 96 and the procedure is prescribed in Order XLI of the C.P.C.,1908.

(ii). Order 20 Rule 19 (2) specifically provides that any decree passed in a suit in which a set-off or counter claim is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off or counter-claim had been claimed. A plain reading for an easier appreciation could be attempted as follows:-

> Any decree passed in a suit shall be subject to the same provisions in respect of appeal to which it would have been subject.

(iii). It is evident therefrom that where there is any set-off or counter-claim actually preferred, the decree would be subject to the same provisions in respect of appeals, as if no set-off or counter-claim had been claimed.

(iv). Now the provisions relating to appeals in respect of decree is not only governed by the provisions contained in Section 96 and Order XLI of the C.P.C.,1908, but also subject to the provisions contained in the Goa Civil Courts Act, 1965, the Limitation Act, 1963 and Court Fees Act, 1870.

(v). Section 22 of the Goa Civil Courts Act, 1965 reads as under:-

Section 22:-

> In all suits decided by a Civil Judge of which the amount or value of the subject-matter exceeds (one lakh) the appeal from his decision shall be

direct to the High Court.

(Emphasis supplied).

40. Reading of the provision indicates that the amount of value of the subject-matter is to determine the jurisdiction of appeal to High Court.

41. "Subject matter" appearing in S. 22 of the Goa Civil Courts Act, 1965 would necessarily mean subject matter of the suit and not subject matter of the appeal. The legislatures have used the words "in all suits decided by the Civil Judge in which the amount of value of subject-matter exceeds....". It is, thus, clear that the value of the subject-matter in a suit decided by the Civil Court is to determine the forum of appeal. It is a settled legal position that the appeal is a continuation of the suit as held by the Supreme Court in the case of **State of Kerala V. K.M.C. Abdulla & Co. reported in A.I.R. 1965 S.C. 1585.** Therefore, the subject matter referred to in the above Section 22 is the subject matter in the suit.

42. The jurisdiction of the appellate court cannot be made dependent on the fluctuating valuation of the claim in appeal. The

valuation of claim in appeal has relevance only for the purposes of court fee. The valuation for the purposes of determining jurisdiction and for the purpose of court fee are two distinct factors. They need not be identical or common. The appellant may restrict or relinquish part of the claim and accordingly pay proportionate court fee thereon.

43. With the aforesaid view, let me now turn to the facts of the present case. In the present case, suit of the plaintiff is dismissed. At the same time, counter claim preferred by the defendant is also dismissed. The Original plaintiff has preferred an appeal; being aggrieved by the dismissal of his suit. He was not aggrieved by the dismissal of the counter-claim. He, therefore, valued subject-matter in appeal as per the valuation done in the trial court. In this back drop, one has to examine the legality of the valuation on the appeal put by the original appellant/original plaintiff.

44. According to the Suit Valuation Act and Order VII (i) (f) of C.P.C.require suit must be valued for the purpose of jurisdiction of the Court. So the Suits Valuation Act describes for valuation for the purpose of determining

jurisdiction. With respect thereto valuation of the suit for jurisdiction is regulated by averments made in the plaint. Jurisdiction does not depend on the result of the suit but on the nature of the claim as brought. When the suit is filed in Civil Court, pecuniary jurisdiction of the Court is primarily determined by valuation which the plaintiff puts upon the subject matter of the suit. Primarily, the court in order to determine its jurisdiction can look and rely upon the valuation of the subject-matter which is given in the plaint.

45. At some point of time, there was divergence of opinion on the point, whether for the purpose of determining forum of appeal, its value of the subject matter of suit shown by the plaintiff should determine the forum of the appeal. The majority view now is that it is the plaintiff's valuation in the plaint which controls and governs the jurisdiction; not only of the trial court but also that of the Appellate Court.

46. The word "value", according to the majority views of the High Courts, must be taken to be the value assigned by the plaintiff in his claim while filing suit and not the

value as found by the court. The valuation of the suit determines the forum of the appeal and not the valuation of decree. The forum of appeal is to be determined upon the value as found by the court was not accepted by majority of the High Courts. The proposition of law being too wide the majority view of the various High Courts is that the valuation put up by the plaintiff while instituting suit is to decide the forum of the appeal. This view is reiterated by Full Bench of this Court in the case of **Kazi Syed Saifuddin Vs. Kasturchand Abhayrajji Golchha reported in 2000(4) Bom.C.R. 582** wherein the Full Bench has observed as under:-

> "Once the suit is thus valued and the jurisdiction of the Court is thus determined at the stage when the suit is instituted, that will be the valuation for the subsequent proceedings in the suit also. Obviously, therefore, the appeal being continuation of the suit, the valuation will govern appeal as well and for the purposes of forum of appeal...."

47. Now, with the aforesaid law laid down by the Full Bench of this Court and the similar view adopted by majority of the High Courts, let me turn to examine some of the situations which may arise which may not pose much difficulty in determining forum of appeal based

on valuation though in some cases it may pose a some problem in determining appellate forum based on valuation in the event of decision based on counter claim.

48. Where both suit and counter-claim are dismissed, the subject matter of the appeal would be the plaint. Hence valuation would be as per the valuation of the plaint and Court fee as payable on the plaint; would be as due and payable thereon. The plaintiff cannot be made to value his appeal on the basis of the combined valuation of the plaint and counter-claim, in respect of which he makes no claim.

49. In the case on hand, the appeal filed by the respondent no.1 valuing its appeal in the sum of Rs. 38,500/- is a correct valuation and in view of the amendment to the Goa, Daman and Diu Civil Courts Act,1965 the appeal arising from the suits of which valuation does not exceed more than Rupees One Lakh, the appeal lies to the District Court. In this view of the matter, the valuation of the appeal of the respondent no.1 cannot be on the basis of rolled up valuation as canvassed by the learned Senior counsel for the petitioner. The acceptance of this submission will deprive

respondent no.1 from right of appeal under Section 100 of the Code, which is available to him. Therefore, in my considered view, the appeal filed by the plaintiff in the District Court is perfectly tenable.

50. Having said so, the problematic issue which needs consideration is Whether the District Court would be competent to hear and decide cross objection value of which travels beyond the jurisdiction of the appellate court as has happened in the case on hand.

51. At this stage, before considering the said issue, I must make it clear that an attempt was made by respondent no.1 to contend that cross-objection is not tenable in view of the judgment in the case of Jamshed H. Wadia Vs. Board of Trustees, 2004 (4) Bom.C.R. 125 (S.C.) (Paras 31 to 39); but contention in this behalf; in this petition; cannot be entertained because the tenability of the cross-objection is not under challenge at the instance of the respondent no.1 (original plaintiff)/opponent in the cross objection. Though it may be possible for respondent no. 1 to raise the issue in this behalf at the time of final hearing of the appeal and cross-objection before the lower appellate

court. However, at this stage, in absence of substantive challenge, I am not inclined to consider the competency and/or tenability of the cross objection or applicability of the provision of Order 41 Rule 22 of the C.P.C. to the decree arising out of counter-claim and it's effect on the cross objection in question. I am, therefore, at this stage, considering issue of the appellate forum on the premise or assumption that the mode and manner in which cross-objection is preferred; the same is tenable and permissible under Order 41 Rule 22 of the Code; in the facts and circumstances of the present case leaving the question of it's tenability open for being decided by the lower appellate court at the time of final hearing if raised before it.

52. On the above premise, let me consider whether cross-objection, the value of which travels beyond the pecuniary jurisdiction of the Appellate Court, can be tried by the District Court.

53. In order to answer the above question one has to again, go back to the legislative history of the Civil Procedure Code in general and with respect to the provision of Order 20 Rule 19 of the Code in particular.

54. Let me, once again, revert back to the legislative object behind enactment of provision of Order 20 Rule 19 (2) of the Code. The provisions of the old Code of C.P.C. 1882 (Act No. 14 of 1882) (i.e. prior to the Code of 1908) had Section 216 which provided that where a set off was claimed by the defendant, the amount of decree passed in favour of the defendant was to determine the forum of appeal. Section 216 of the old Code came to be substituted with that of Order 20 Rule 19 (2) to give effect to the legislative view that all appeals from the decree relating to set off should lie to the court to which appeals in respect of the original claim would lie.

55. The new Code was enacted. The unamended new Code of 1908 via Order 20 Rule 19 (2) provided that in decree passed in a suit shall be subject to the same provisions in respect of the appeal to which it would have been subject if no set off had been claimed. In other words, any decree passed in a suit is made subject to the same provisions in respect of appeal to which it would have been subject if no set off had been claimed.

56. Having noticed the change in old Code

and new unamended Code of Civil Procedure, let me now turn to the further legislative change brought about in new Code by virtue of amendment of the year 1976; whereby provisions with respect to counter-claim under Order 8 Rule 6-A to 6-G came to be inserted. Consequent to this insertion provisions of Order 20 Rule 19 (1), (2) also came to be amended and the words "counter claim" were inserted immediately after the words "set off". Thus, by virtue of this amendment, set off and counter claim are treated at par; and both were brought on the same platform with equal status. Therefore, while interpreting clause, Order 20, Rule 19 (2), the same treatment which is given to a decree of set off, will have to be given to a decree in suit in which counter-claim was claimed. The legislative object which led to deletion of Section 216 and enactment of Order 20 Rule 19 in respect of decree of set off shall also hold good in respect of decree from counter claim. As such decree passed in a suit where counter-claim was preferred has to be treated subject to the same provisions in respect of appeal to which it would have been subject, if no counter-claim had been preferred. If the legislative view is that the decree wherein the set off is claimed should go before the same Appellate Forum to

which it would have been subject in normal course in absence of claim for set-off; then so far as the counter claim is concerned; the same treatment will have to be accorded to a decree passed in a suit where counter-claim was preferred. As an extension of the same principle, the cross objection arising from the decree of set-off and/or counter-claim will have to be given similar treatment in the matter of determination of Appellate Forum.

57. Having said so, one has to answer the question involved herein based on the facts of the case on hand. The answer to the question posed hereinabove lies in the provision of Order 20 Rule 19(2) of the Code. In this case, since the cross-objection is preferred in the appeal which is properly filed in the District Court, the cross-objection of the petitioner will have to be decided by the same appellate court only. However, subject to it's tenability as the said question is left open by me for being decided by the lower appellate court at the time of final hearing of the appeal, if raised.

58. The petition is, thus, dismissed. No order as to costs.

(V.C.DAGA,J)